

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHARLES TILL,	)	
	)	
Plaintiff,	)	No.: 21-CV-1256
	)	
NATIONAL GENERAL ACCIDENT AND	)	Honorable Thomas M. Durkin
HEALTH INSURANCE COMPANY,	)	
	)	
Defendant,	)	

**DEFENDANT’S MOTION TO WITHDRAW ITS  
ANSWER AND FOR LEAVE TO FILE ITS RULE 12 (b)(1) MOTION  
TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND  
RULE 12 (b)(1) FOR FAILURE TO STATE A CAUSE OF ACTION ON WHICH  
RELIEF MAY BE GRANTED AND FOR SETTING OF BRIEF SCHEDULE**

NOW COMES the Defendant, NATIONAL HEALTH INSURANCE COMPANY (incorrectly sued as “National General Accident and Health Insurance Company”), by and through its counsel, PIPAL & BERG, LLP, and respectively asks the Court for an Order allowing it to withdraw its Answer, and file a Rule 12(b)(1) Motion to Dismiss for lack of jurisdiction or, alternatively, a Rule 12(b)(6) Motion to Dismiss for failure to state a cause of action on which relief can be granted, and in support thereof, states as follows:

1. On March 5, 2021 Plaintiff has filed a one-count Complaint alleging that Defendant violated the Employment Retirement Income Security Act (“ERISA”), 29 U.S.C. §1001 et seq. Plaintiff generally alleges that defendant wrongfully denied healthcare benefits and failed to pay medical bills in violation of ERISA.
2. On May 6, 2021, defendant filed its Answer and Affirmative Defenses to Plaintiff’s Complaint, a copy of which is attached hereto as Exh. A.
3. In its answer to the “Jurisdictional and Venue” allegation, defendant admitted that this Court had subject matter jurisdiction over the subject matter of plaintiff’s Complaint, but did

not intend to admit that the Court had jurisdiction as a result of the insurance policy being governed by ERISA. The Court could have diversity jurisdiction over this matter but none has been alleged.

4. Defendant's counsel has learned of facts which would demonstrate that this Court lacks subject matter jurisdiction, and seeks to withdraw its prior pleading and advance the facts which give rise to a challenge to subject matter jurisdiction.

5. It has been held that Federal courts always have jurisdiction to determine their jurisdiction. *Flores-Leon v. I.N.S.*, 272 F.3d 433, 437 (7<sup>th</sup> Cir. 2001); and a party cannot waive subject matter jurisdiction. *Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F. 3d 379, 381 (7<sup>th</sup> Cir. 2001).

6. Defendant respectfully asks this Court to allow it to withdraw its prior Answer, and file its Motion to Dismiss and Memorandum in support thereof, copies of which are attached hereto as Exh. B and C respectively.

7. Defense counsel has supplied plaintiff's counsel with copies of the Motion to Dismiss and Memorandum in support thereof and the parties have conferred. Plaintiff's counsel desires to oppose the Motion to Dismiss and have 28 days to file a Response brief. Defense counsel desires 14 days to file a Reply brief.

WHEREFORE, Defendant prays for an Order granting it leave to withdraw its Answer and to file its Motion to Dismiss and Memorandum in Support of said Motion to Dismiss and for the Court to schedule a brief schedule of 28 days for Plaintiff to respond to the Motion to Dismiss and 14 days for Defendant to file a Reply.

Respectfully submitted,

/s/ Dennis A. Berg

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*Attorneys for National Health  
Insurance Company*

**CERTIFICATE OF SERVICE**

The undersigned, being first duly sworn on oath, states that he has served a copy of the foregoing document on the attorneys of record by e-filing with the ILND CM/ECF and by placing same in an addressed envelope, postage paid, and depositing in the U.S. Mail at 100 South Wacker Drive, Chicago, Illinois, before 5:00 p.m., this 27<sup>th</sup> day of August, 2021 addressed to the following:

Joseph Urani, Esq.  
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/s/ Dennis A. Berg

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